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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,117	06/24/2003	Nathan Pyles	JHT-001USP	2202

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EXAMINER

NGUYEN, TAM M

ART UNIT PAPER NUMBER

3764

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/603,117

Applicant(s)

PYLES ET AL.

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-20 and 23-31 is/are rejected.
- 7) ☒ Claim(s) 10, 11, 21, 22, 32 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1-13-04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**DETAILED ACTION*****Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the "reeling portion 522" disclosed on Page 6, line 12 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 23-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Street (4,625,962).

2. As to claims 1-5, Street discloses a dual-function treading exerciser comprising a lower body exerciser having a treading platform and a continuous tread (20), and an upper body exerciser (C) having a frame (30) and a movable handle assembly, joined to a front portion of the frame, that includes a pair of pulling devices (80,82) and a rotary shaft (42) wherein the pulling devices each include a pulley (84), a pull cord (70), a handgrip (74) and a biasing unit (92) as substantially claimed (see Figs. 1 & 2).
3. As to claims 6-8, Street discloses an exercise device as described above (see discussion of claims 1-5). Street further discloses that the movable handle assembly is disposed substantially higher than the fixed handles (14) and the biasing unit includes a spiral spring member (92) that is fastened to a housing (94) at one end and to a respective pulley (84) at the other end and biased to rotate in a predetermined direction (see Fig. 1).
4. As to claims 23-30, Street discloses an exercise device as substantially claimed (see discussion of claims 1-8). Street further discloses that the pulling

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devices operate independently of one another via the one-way clutch (86) (see Abstract and Fig. 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street in view of Lee et al. (6,123,649).

5. As to claims 12-19, Street discloses an exercise device as substantially claimed (see discussion of claims 1-8). Street does not disclose that the pulling device includes a chamber wherein the pulley is disposed. Lee et al disclose a similar exercise device having a pair of pulleys (140) that are disposed within a chamber (130) (see Figs. 6-10). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to place each of Street's pulleys into a chamber/housing since the practice of placing movable parts into a protective housing is well known in the art to protect the components from dirt and dust and the user from the movable parts.

Claims 9, 20 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Street in view of Wang et al. (6,599,223).

6. As to claims 9, 20 and 31, Street discloses an exercise device as described above (see discussion of claims 1 and 23). Street further discloses a

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flywheel assembly (40) mounted on the shaft, a unidirectional bearing (86) disposed between the shaft and each pulley and an adjustable resistance device (50) disposed adjacent to the flywheel to provide resistance to the flywheel (see Col. 2, line 64-Col. 3, line 9, Col. 3, lines 20-33 and Fig. 2). Street does not disclose that the adjustable resistance device is magnetic. Wang et al. disclose a similar exercise device having pulleys that rotate a flywheel that includes an adjustable magnetic resistance device (28). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Street's weight-strap resistance means with Wang's magnetic resistance means since the latter is considered to be functionally equivalent in the exercise art in providing an adjustable resistance and the latter device is more compact for ease of storage and transport of the overall device.

#### ***Allowable Subject Matter***

7. Claims 10, 11, 21, 22, 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Grinblat '918, Stropkay '077, Schaber '952 and Norton '516 each disclose treading exercisers having both lower and upper body exercisers wherein the upper body exerciser includes pulling devices.

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Wu et al. '520, Drapeau '677 and Wang et al. '069 each disclose exercise apparatuses having pulling devices and a flywheel having a magnetic resistance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F, 9-5.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 7, 2004

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12/9/04